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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 13 of the provisional agenda

RIGHTS OF THE CHILD

Written statement* submitted by the International League for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 0 6 7 6 *

ENG

1. The U.N. Convention on the Rights of the Child (CRC) secures to children the basic rights to food, shelter, healthcare, and education. It also instructs states that, to implement the CRC, states should be guided at all times by the "best interests of the child." Article 24 sets the "highest attainable standard of health" for children as a goal for states party to the CRC. In pursuit of this goal, the Convention requires states to take all available measures to diminish infant and child mortality; provide necessary health care to all children, and combat disease and malnutrition.1

2. The CRC recognizes that limitations on state resources make immediate and complete realization of its goals unrealistic.2 State claims of resource constraints, however, often mask decisions to place other political and economic priorities above health care. Given the CRC's goals and its near unanimous ratification, the welfare of the next generation is recognized as crucial. Common sense would dictate making children's health a top priority. At one end of the spectrum are countries like the United States, which, despite its enormous wealth, still does not ensure a medical safety net for all children. At the other end are developing countries that have made substantial economic progress over recent decades, which continue to prioritize economic growth over the welfare of children.

3. Tibet provides one example. A recent study on child healthcare in Tibet from the International Committee of Lawyers for Tibet found that in many areas, the provision of healthcare has improved in recent decades.3 Nonetheless, it finds some areas of concern. Information collected from this study provides evidence of both substandard healthcare and nutrition for Tibetan children, as well as a proven ability to do much better, were if not for political decisions to allocate resources almost exclusively to urban dwellers. In Tibet, such decisions satisfy the needs of the vast majority of Chinese cadres and settlers, and ignore 80% of Tibetan children.

4. First, Tibetan children face an absence of adequate healthcare facilities in rural areas. Tibetan children in Lhasa and a few other urban areas live near modern hospitals. More than eighty percent of Tibetans, however, live in rural and nomadic areas. Most Tibetans in those areas must travel hours or days to reach a modern medical clinic. In the event of an emergency, Tibetan children may be unable to reach an appropriate facility in time to avert fatality. One child, for example, who had been mauled by police dogs, had to travel two days by yak with his father to reach the nearest hospital.

5. Second, prohibitive costs pose a major barrier to medical treatment. The PRC claims "[t]he government provides free medical care for all Tibetans." 4 One medical aid worker in Tibet, however, described the healthcare system as "the most expensive free healthcare system in the world." The large hospitals charge excessive "security deposits," without which they refuse to treat patients. Larger hospitals generally require a 1,000-yuan security deposit for admission. The size of the deposit may vary depending on the hospital's location (urban or rural), as well as whether the patient has connections to the Chinese

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1 CRC, art. 24.

2 *See* UNITED NATIONS CHILDRENS FUND, IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD (1998) at 322.

3 International Committee of Lawyers for Tibet, A GENERATION IN PERIL: THE LIVES OF TIBETAN CHILDREN UNDER CHINESE RULE (2001).

4 *See* Information Office of the State Council of the People's Republic of China, *Tibet – Its Ownership and Human Rights Situation* (Sept. 1992).

government. Security deposits range from 1,000 yuan at the village level to 2,000 yuan at the larger Chinese hospitals. (In Tibet, 1,000 yuan may represent 3-6 months' income.) Many families cannot afford required hospital care. One boy, for example, stated that his family had to sell all of its possessions to pay for his mother's four-month stay in the hospital.

6. A planned immunization program has been implemented in Tibet since 1986, with reports claiming over 85 percent of children have been inoculated.5 But other evidence suggests this number is not accurate. Several physicians reported that few children received vaccinations in remote villages because healthcare workers dislike serving in these regions. Urban Tibetan children typically can recall childhood shots, but those from rural regions often do not. Moreover, most refugee Tibetan children arrive in India without a "TB mark," which indicates the standard "BCG" vaccination for tuberculosis. Separate reports show that tuberculosis is a widespread problem among Tibetan children.

7. Most disturbing is the growing evidence that Tibetan children suffer from growth stunting as a result of severe malnutrition. A February 2001 study in the *New England Journal of Medicine* examined 2,078 Tibetan children under the age of seven.6 The study found that "stunting was linked to malnutrition . . . and was often accompanied by bone disorders, depigmented hair, skin disorders and other diseases of malnutrition." More than fifty-six percent of Tibetan children between the ages of two and seven manifested severe growth stunting.7 We emphasize here that early childhood malnutrition typically affects not only physical development, but mental development as well.

8. Poor diet and the absence of a clean water supply play a major role in malnutrition. Official data issued in 1998 shows that in 1997, among China's rural populations, the Tibet Autonomous Region (TAR) ranked last in improved access to clean drinking water with only an eighteen percent improvement. The next-lowest ranked province in China, Chongqing, improved by almost forty-two percent.8 Research does indicate that some Tibetan children suffer from the absence of a stable clean water supply. Contaminated water leads to chronic gastrointestinal infections and malabsorption syndromes, which contribute to the severe growth stunting.

9. We note, for example, that dysentery — which can be caused by parasites, a poor water supply or spoiled food — is one of the most common ailments for Tibetan children. In fact, dysentery is the single greatest cause of infant mortality in rural regions of Tibet. Tragically, the World Health Organization has noted that to prevent most deaths caused by "diarrheal disease, there exists a simple, inexpensive and effective intervention: oral rehydration therapy."9

10. The scarcity of data makes it difficult to assess the state of Tibetan children's healthcare and nutrition. This results primarily from the difficult barriers erected to conducting independent studies and monitoring of conditions within Tibet. Foreign charities and humanitarian aid projects operate in Tibet, but the government tightly regulates the scope

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5 Information Office of the State Council of the People's Republic of China, *Tibet – Its Ownership and Human Rights Situation* (Sept. 1992).

6 *Nutritional and Health Status of Tibetan Children Living at High Altitudes*, 344 N. ENGL. J. MED. 341 (No. 5) (2001).

7 *See id.*

8 PEOPLE'S REPUBLIC OF CHINA, YEAR BOOK OF HEALTH IN THE PEOPLE'S REPUBLIC OF CHINA (1998).

9 WORLD HEALTH ORGANIZATION, WORLD HEALTH REPORT 1999: MAKING A DIFFERENCE 20 (1999).

of their activity. These restrictions make it difficult to ascertain fully the health and nutritional issues faced by Tibetan children and thus impede progress towards their resolution.

11. We also emphasize that government restrictions on the ability of outside organizations to study and publicize the health conditions prevailing in Tibet violate Tibetan children's rights. Under the CRC, states parties agree to pursue economic, social and cultural rights "where needed, *within the framework of international cooperation*."10 By restricting monitoring and access to information, the government inhibits international cooperation, limiting the ability of international organizations to help children in Tibet.

12. At the same time, China's decision to focus its healthcare resources on urban areas that serve principally Chinese settlers indicates undue neglect of the health and nutritional needs of Tibetan children. In addition, it appears that health and nutritional conditions for Tibetan children are in several respects inferior to those prevailing elsewhere in the PRC. In 1990, the infant mortality rate of the Tibetan nationality was 92.46 per 1,000 live births, roughly triple the national average for China.11 In contrast to Tibetan children, who suffer from growth stunting caused by malnutrition, another study published in 1996 by the *New England Journal of Medicine* found that in China (excluding Tibet) children in rural areas are continuing to grow, though at a pace slower than urban children. The Tibetan life expectancy (59.7 years) ranks lowest among China's eighteen "major nationalities."12 Official statistics provided by the PRC indicate that the ratio of doctors and medical aides per village in the TAR is only .61, compared with a 1.8 average for the PRC as a whole. The TAR, in fact, ranks the lowest of all provinces in the PRC in the number of medical personnel per village.13 Whereas China has roughly 85-95 beds per 1,000 people, the TAR has only 6-22 beds per 1000 people.14

13. Tibet, then, contrasts deep concerns about healthcare and nutrition for the vast majority of Tibetan children, with plentiful resources for urban Chinese settlers and cadres in Tibet and for urban Chinese throughout China. We therefore urge the Committee to scrutinize carefully situations such as Tibet, where some evidence of progress on healthcare for children, combined with claims that resource constraints prevent more being done, may mask political decisions that ignore the best interests of children. We urge the Committee to adopt a resolution addressing this, as well as other, human rights issues in Tibet at this session.

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10 CRC, art. 4 (emphasis added).
11 Jin Yangsun, et al. *A Study on Patterns in the Average Life Expectancies and Mortality Rates of 56 Nationalities in China in 1990*, 6 CHINESE J. OF POPULATION SCIENCE 263, 268 (1994).
12 Yangsun, *supra* note 9.
13 PEOPLE'S REPUBLIC OF CHINA, YEAR BOOK OF HEALTH IN THE PEOPLE'S REPUBLIC OF CHINA (1998).
14 World Food Program, *China Province Reference Database for Vulnerability Analysis*, (June 1998, as revised).

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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 7 of the provisional agenda

THE RIGHT TO DEVELOPMENT

Written statement* submitted by the International League for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 0 6 7 8 *
ENG

1. The right to development belongs fundamentally to peoples and originates in their paramount right to self-determination. Articles 1 and 2 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) emphasize that it is "by virtue of" the right to self-determination that peoples enjoy the right to "freely pursue their economic, social and cultural development" and to "freely dispose of their natural wealth and resources." Article 1(2) of the General Assembly's 1986 Declaration on the Right to Development establishes that development "implies the full realization of the right of peoples to self-determination." Self-determination means, at a minimum, that peoples must enjoy the right to participate in the design and implementation of a genuine sustainable development policy. Any state "development" policy that proceeds without participation by the peoples it affects—without, that is, respect for their right to self-determination—is not development; it is exploitation. In one notable example, the Chinese government has adopted policies openly acknowledging its intent to use massive economic development in Tibet in part to eliminate a separate Tibetan culture—a purpose diametrically at odds with the Tibetan people's right of self-determination.

2. For this reason, we wish to call the Commission's attention to the ongoing exploitation of the Tibetan people's land and resources by China. China repeatedly states that it considers the right to development paramount. However, "development" in Tibet proceeds according to policies formulated by Beijing without any meaningful participation by Tibetans. Moreover, the projects that China pursues in Tibet do not benefit the Tibetan people.

3. Recent development policies articulated at Beijing's Fourth Tibet Work Forum in June 2001 and the Tibet Autonomous Region (TAR) Tenth Fifth Year Plan (2001-2005) reaffirm the government's top-down approach to development in Tibet. These central policy mandates oppose "cultural separatism" and seek to pursue "greater assimilation of Tibet into a 'unified' Chinese state" through planned economic development and "increased migration of the importation of people, ideals and models from China." Such policies are inconsistent with the Tibetan people's right to participate in formulating a sustainable and environmentally sound development policy crucial to alleviating the devastating poverty in Tibet.

4. Virtually all of the natural resources and material wealth extracted from Tibet are channeled back to enrich China's eastern regions. While Beijing asserts in its November 2001 White Paper that western development is improving Tibetans' quality of life and incorporating Tibetans into the "big family of China," the few resources redirected back into Tibet primarily benefit urban Chinese settlers who have been encouraged by China's population transfer program to resettle in Tibet. Chinese businessmen, investors and government officials enjoy most of the wealth derived from the exploitation of Tibet's resources. In 1997, for example, the International Commission of Jurists (ICJ) noted that "profitable returns to the state are generated by high profit levels of monopoly state enterprises reliant on *Tibetan* raw materials as their primary inputs, obtained at prices below market rates . . . . Transfer pricing is a systematic feature of the extraction of Tibet's resources for Chinese use."

5. In June 1999, President Jiang Zemin officially proclaimed the so-called "Western Development" campaign. In theory, this refers to a systematic policy of developing western China by improving its economic infrastructure and providing more funds for education, the environment and the development of technology. In practice, it represents an escalation of the long-standing Chinese policy of extracting the wealth of natural and mineral resources that exist in Tibet and Xinjiang for the benefit of the Chinese people.

6. A key element of the Western Development campaign is China's population transfer program, which provides economic incentives to Chinese who relocate to Tibet. The influx of 7.5 million Chinese settlers has already had a dramatic economic and cultural impact on Tibet, transforming the estimated 6 million Tibetans living there into a minority population. Limited educational opportunities for Tibetans have resulted in a sixty percent illiteracy rate among Tibetan adults, compared to a 9 percent rate for Chinese adults. Moreover, Tibetans face employment discrimination in the Chinese dominated business community. Population transfer has also led to the systematic suppression of Tibetan religion and culture, such as schools forbidding Tibetan children from learning their native language or history. The effect of this policy is to control Tibet's land and its people politically, economically and culturally—not to bring what Tibet desperately needs: better healthcare, education and employment opportunities. Thus, it is clear that the motive behind "Western Development," as Chinese economist Hu Angang candidly acknowledged, is to preserve the Communist Party's political control in Tibet: "The worst case scenario – and what we're trying to avoid – is China fragmenting like Yugoslavia. Already, regional [economic] disparity is equal to – or worse than – what we saw in Yugoslavia before it split."

7. While China claims to prioritize economic rights for its entire people, its development policies have failed to reduce the disproportionate level of poverty in western China. Unemployment among the Tibetan populations is high—over 40 percent in some areas—and the Tibet Information Network's (TIN) research indicates that eastern Chinese farmers make more than three times the income Tibetan farmers earn. The evidence further suggests that the urban Chinese settlers will primarily benefit from the new large-scale development and mineral exploitation projects, while the poor farmers and nomads, who make up 80 percent of Tibet's population, stand little to gain. According to ICJ, per capita spending on healthcare, education and subsistence is also lower in the TAR than anywhere else in China. This means that Tibetans have neither the economic resources nor the education to compete for the new jobs and positions that the "Western Development" policies establish in their lands.

8. Not one of the ten large-scale "Western Development" projects that China launched in 2000 is located in the TAR or other rural Tibetan regions. Instead, Beijing has determined they should be constructed in the wealthier western regions that are primarily dominated by Chinese settlers and currently have better infrastructure. The Chinese State Council's approval of the Qinghai-Tibet railway in February 2001 represents Beijing's most recent effort to accelerate the "assimilation of Tibet into 'the motherland,'" to increase the extraction of minerals and other natural resources, and to promote Chinese migration. The purpose of such large-scale infrastructure projects, according to TIN, is to facilitate the extraction of raw materials and goods *out of* Tibet and into the wealthier, more industrialized eastern Chinese regions. The People's Daily acknowledged that this project will bring an "unprecedented mammoth transfer of resources."

9. A significant amount of China's energy resources, including oil, gas and hydropower, are located in Xinjiang and in the Tibetan regions of Qinghai. Yet TIN reports that "[e]nergy resources, including hydropower and gas, are being exploited primarily for use in eastern China, rather than to assist industrialisation in the west." Not only do Tibetans enjoy none of the benefits of their land's energy resources, evidence indicates that these projects are pursued in an environmentally destructive manner, polluting Tibet's lands, forests and water sources. Current energy projects are being developed without consulting Tibetans—the people who will be most affected by them—and without any assessment of their potentially drastic environmental impact.

10. The current plan to construct an oil pipeline between Chad and Cameroon similarly exploits the people's resources without their participation or benefit. The World Bank, which has approved $193 million in loans to assist Chad, Cameroon and a consortium of oil companies to develop the oil reserves, believes this project will help alleviate the poverty of Chad's seven million people, generating an estimated $2 billion in revenues over the next 25 years. But here again, (i) the oil pipeline's ostensible beneficiaries, Chad's people, have not been consulted and have not enjoyed democratic participation in decision-making; (ii) Chad's government, which will collect and control the oil revenues, has an atrocious human rights record; and (iii) the potential for leakage from the pipeline threatens adjacent vital water systems. Without the participation of Chad's people, this kind of "development" may result in exploitation.

11. Mr. Chairman, the right to development, properly understood, consists in a "rights-based approach based on empowerment and participation [of the beneficiaries] in the decision-making and execution." E/CN.4/2000/WG.18/CRP.1, para. 64. China's exploitation of Tibet's natural and mineral resources, which proceeds without Tibetan participation and economic benefit, is inconsistent with respect for the human right to development. Only when Tibet's people enjoy genuine self-determination, which includes the right to freely determine the disposition of their natural and mineral resources within a framework of environmental conservation and international cooperation, can they truly enjoy the right to development. We therefore urge the Commission to adopt a resolution calling on the Chinese government to end human rights abuses in Tibet, including the denial of the Tibetan people's right to self-determination and development.

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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement* submitted by the Jammu and Kashmir Council for Human Rights (JKCHR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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United Nations and the member nations India and Pakistan, are committed to a 'programme package', in regards to the human rights and fundamental freedoms in Kashmir. UN resolutions are in reference to the question of 'peace and security' and India and Pakistan as partiers to the dispute have acquiesced to the jurisprudence of the Charter obligations. They have agreed to ensure human rights and fundamental freedoms and on an outline to secure the right of self-determination in Kashmir.

The two states have committed themselves, to many other bilateral agreements, namely Tashkent Declaration of January 1966, Shimla Agreement of July 1972 and Lahore Declaration of February 1999. The principle of non-interference in the internal affairs of each other and the settlement of disputes through bilateral negotiations or by any other peaceful means are the principal essentials in these declarations and agreements. A reference to the UN Charter, makes them complementary to the UN 'programme package' on Kashmir.

Over the years we find that UN failed to assume its role under UNCIP resolutions in the Pakistani controlled part of Kashmir – called Azad Kashmir. Pakistan has moved in and assumed responsibilities under UNCIP resolutions in Azad Kashmir. However, it has not defined the corresponding legal limits of this control. There is no recourse to adjudge that the exercise of responsibility is reasonable and in good faith, for the proper purpose only and in accordance with the spirit as well as the letter of the UNCIP resolutions.

In regards to the people of Northern Areas, Gilgit and Baltistan, Pakistan has decided to remain at variance with UNCIP resolutions and continues to seek reliance on an Agreement of April 1949. India and Pakistan are holding on to such agreements in the name of the people. However, these agreements remain suspect because they have been manipulated. They do not reflect the 'mature judgement' and the 'enlightened conscience' of the Kashmiri representatives. There is no evidence of any reference to the free will of the people.

United Nations failed to establish a government in the Indian controlled Kashmir at Srinagar in accordance with Security Council Resolution 47(1948) of 21 April 1948, comprising of major political groups. Although there have been election in 1951, 1957, 1962, 1972, 1983, 1987 and 1996, yet the dispute continues on the question of the 'transfer of the free will' of the people. It is admitted on balance that 'the will of the people' has not been the 'basis of the authority of government' in the Indian controlled Kashmir. It is in this context that Indian Prime Minister on 15th August 2001 acknowledged the 'pain and agony' of the people of Jammu and Kashmir and promised that when the elections to the new State Assembly took place, "we shall ensure free and fair elections".

The lack of understanding in the political ranks, lack of a 'mature judgement' and the non use of 'enlightened conscience' or making of an 'informed choice', in the various parts of Jammu and Kashmir, has reduced the regime of human rights and fundamental freedoms to a flattering poor low.

The political disciplines, the militants and the Indian security forces, use a treble threat of coercion on the civil society, to seek compliance of the three sorts on the question of participation and the boycott of elections.

Political organizations on account of their lack of understanding of the jurisprudence of UNCIP resolutions, the jurisprudence of self-determination under article 1(2) of UN Charter, article 1(1)

of ICCPR and article 1(1) of ICESCR and the jurisprudence of elections under article 21(1) (2) (3) of the Universal Declaration of Human Rights, article 25(b) of ICCP are making a serious error in coercing the people to boycott the elections.

This error of judgement on the part of political organizations and the threat of the use of force by militants against those participating in elections is a violation of a basic human right i.e., to take part in the conduct of public affairs'. Since UN has settled the issue of self-determination and elections in the case of Kashmir a continued misrepresentation by political organizations and a violation of this right accrues an aggravated liability in the conduct of public affairs.

In securing the human rights and fundamental freedoms in complex situations like Kashmir, the principal essential, that should merit our attention is whether or not the leadership qualifies the test, (a) of 'Principality' set out in UNCIP resolutions, (b) is able to exercise a 'mature judgement', (c) has an 'enlightened conscience' to make an informed choice and (d) above all whether it has the 'mandate' or the ' authoritative instruction' from the people.

It is important for us to understand and take cognisance that politicians in Kashmir and the militants rest their case on UNCIP resolution and anchor it on the 'freedom of expression'. However, they conveniently continue to remain ignorant about round the corner jurisprudence of General Assembly resolution 46/137 of 17 December 1991 on the importance of election and how elections impact the effective enjoyment of a wide range of other human rights and fundamental freedoms.

The GA resolution in para 3 holds that "periodic and genuine elections are necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter of practical experience, the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms, embracing political, economic, social and cultural rights".

The Kashmiri political schools advising the people to boycott the elections, in fact, are guilty of not taking the measures that could effectively protect a wide range of other human rights and fundamental freedoms. We have to take cognisance of the loss of human life in Kashmir and sensitize the question of a criminal liability of politicians in the conduct of public affairs and of the Indian security forces in the face of restraining discipline of UNCIP resolutions.

As a principle and more so in the face of proxy politics and proxy war in Kashmir, there is an urgency to complement the pledge of Indian Prime Minister that "we shall ensure free and fair elections" by securing an 'effective administration of justice during elections' and by focusing on 'non-interference with rights and the existence of an environment free of intimidation'.

India as a member nation of UN and as a democracy, should have more institutional reasons than many other member nations, to accord more meaning to the 'Duty of Service' that the UN General Assembly envisaged in 1979 in the Code of Conduct for Law Enforcement Officials. It imposes a duty of service to the community upon all officers of the law. The notion requires that security forces strive to ensure that all citizens benefit from elections that are administratively sound and free of any disruptive forces, which seek to undermine, the free expression of popular will.

The Code of Conduct provides that "law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights". This includes not only the human right to take part in elections but all human rights. Therefore we have to bear in mind that police agencies and

security forces that do not respect fundamental human rights have the potential to create an intimidating atmosphere that will inhibit the electorate and thereby subvert the genuineness of the elections' outcome.

The test of representation therefore is to serve one's constituents by the exercise of a 'mature judgement' and an 'enlightened conscience'. The great merit of the 'mandate doctrine' is that it seems to impose some kind of meaning upon an election and so offers popular guidance to those who exercise government power.

We need to remain knowledgeable about the poor information on political issues, little knowledge of the content of manifestos, influence of 'irrational factors', such as the personality of party leaders, the image of parties or habitual allegiance formed through social conditioning and create awareness through human rights education. We also need to deflect the danger inherent in deals and trade-off negotiated after the elections.

The State of Jammu and Kashmir shall go to the 9th poll since 1951 in October/November 2002. The ability of the people to elect their representatives, has suffered an on going prejudice. In the exercise their human right they shall be exposed to a treble coercion, of politicians, militants and security forces, all seeking separate compliance. Kashmir is an exceptional situation and over 2 million Kashmiris have lost their homes. They have been displaced internally and across the borders as well. It needs to be pointed out that the people of Kashmir, are poorer than the poor people of India and Pakistan. They continue to suffer inequities and receive far less fair treatments under the two administrations of India and Pakistan.

Their suffering dates back to 1877. Although they won the argument of 'State for the State's People', they failed to win the subsequent arguments of 'responsible governments'. It is high time that we assist the people of Jammu and Kashmir, to ensure that the basis of governance is the free will of the people and that we take measures under UNCIP resolutions, Tashkent Declaration, Shimla Agreement and Lahore Declaration, to empower the people, placed in three administrative controls. We should ensure that the right to self-determination and right to take part in elections are understood as two separate rights. That participation in election is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms, embracing political, economic, social and cultural rights.

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COMMISSION ON HUMAN RIGHTS
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EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS: ADAPTATION AND STRENGTHENING OF THE UNITED NATIONS MACHINERY FOR HUMAN RIGHTS

Joint written statement submitted by Amnesty International, the Association for the Prevention of Torture, the Friends World Committee for Consultation (Quakers), Human Rights Watch, the International Commission of Jurists, the International Federation of ACAT (Action of Christians for the Abolition of Torture) and the International Federation of Human Rights Leagues, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 January 2002]

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Standing Invitations to Thematic Human Rights Mechanisms

The UN High Commissioner for Human Rights, Mary Robinson, in her statement to the UN General Assembly on 6 November 2001, as well as in her statement to the Informal One Day Meeting of the Commission on Human Rights (25 September 2001) stated that "a practical way to demonstrate the commitment of States to cooperation is through extending standing or open invitations to special rapporteurs allowing them to visit." This is also reflected in her report to the 56th Session of the UN General Assembly (A/56/36, paragraph 67).

The above-named non-governmental organisations welcome the decision of the governments of Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Guatemala, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Turkey and United Kingdom of Great Britain and Northern Ireland1 to extend standing invitations to all the thematic mechanisms of the UN Commission on Human Rights to visit their country. In this way, they have demonstrated their willingness to cooperate with these mechanisms and their commitment to the promotion and protection of human rights through the United Nations system. We urge other governments also to issue such standing invitations.

Background:
Since the 1980s, the UN Commission on Human Rights has established a number of thematic human rights mechanisms, known generically as the "Special Procedures". These consist of Special Rapporteurs, Special Representatives, Working Groups and Independent Experts who are charged with considering a specific human rights issue in relation to all countries in the world. As part of their work, the Special Procedures visit countries in order to examine at first hand the situation in relation to the issue in their mandate, and report to the Commission on these visits.

In order to undertake a country visit, the individual thematic mechanism has to be invited by the State concerned. At present, the process is almost always initiated by the Special Procedures themselves approaching the State expressing the wish to visit and asking for the necessary invitation. Some States respond promptly to such requests, some respond eventually and some fail to respond. This also means that resources are used in soliciting invitations rather than on the implementation of the mandates.

Since all the Special Procedures are established by resolution of the Commission on Human Rights in which all the Member States of the UN can participate and since country missions are part of the established methods, States should do their best to facilitate such visits.

A simple and effective way of doing this, is for States to issue a Standing Invitation to visit their country to all the thematic Special Procedures of the Commission. This would:

1. demonstrate their commitment to co-operation with these procedures;
2. enhance the efficiency of the process by reducing delays and decreasing the administrative burdens on all parties;
3. de-politicise the process of country visits by shifting the focus away from the question of access to questions of substance;
4. enable the procedures (individually and corporately) to plan and prioritise visits more effectively, knowing that the invitation to visit already exists and remains open.

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1 In total 33 states have extended a standing invitation to the thematic special procedures of the CHR so far.

Practicalities:

1. A State could announce its decision to extend a Standing Invitation to the Special Procedures at the Commission on Human Rights. The wording used by Norway was: *"Norway would also like to extend an open invitation to all Special Rapporteurs and other mechanisms under this Commission to visit us at any time,* 2 or
2. A State could deposit the standing invitation with the High Commissioner for Human Rights. A simple letter to this effect, lodged with the High Commissioner, would be sufficient. A request that the letter be circulated as a document of the Commission on Human Rights would ensure that the invitation was brought to the attention of other states and non-governmental organisations.
3. The Office of the High Commissioner for Human Rights would establish and maintain a list of such invitations, circulate it to the Special Procedures and their staff in the office
4. The Special Procedure wishing to take up such an invitation would contact the government to inform them of the intention to visit and to arrange the timing, and other aspects of the visit as at present.

Commentary:

In practice, for those States who accept visits from Special Procedures already, there would be no substantive difference. Indeed, there may be less pressure to seek visits precisely because they can be undertaken at any time, and because of the demonstrated openness to visits.

Since the Special Procedures would still be undertaking visits only at the invitation of the Governments, albeit a standing invitation, it does not infringe State sovereignty in any way. At the same time, as a growing number of States issue such invitations, it would facilitate the work of the Special Procedures and demonstrate the good faith of States in accepting their obligation to co-operate effectively with the mechanisms which they themselves have created through the Commission on Human Rights.

Recommendations:

The above named non-governmental organisations call on the Commission on Human Rights to adopt a resolution:

1. Urging all states which have not yet done so to issue standing invitations for country visits to all thematic human rights mechanisms of the UN Commission on Human Rights;
2. Urging all those that have already extended a standing invitation to encourage all those states that have not yet done so to consider doing so and
3. Requesting the Office of the UN High Commissioner for Human Rights to draw this possibility to the attention of states, to establish a list of states which have issued such standing invitations and to circulate it regularly to the Special Procedures and their staff in the OHCHR, and to submit the list annually to the Commission as well as placing it on the website of the Office.

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2 Hilde F Johnson, Minister for International Development and Human Rights of Norway, 26 March 1999.

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Item 6 of the provisional agenda

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Written statement* submitted by The International Movement against All Forms of Discrimination and Racism (IMADR), a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 January 2002]

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*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Standing Invitations to Thematic Human Rights Mechanisms

World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

The International Movement against All Forms of Discrimination and Racism (IMADR) recognises that the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance (WCAR) was a ground-breaking one, addressing important issues, including: Roma and Sinti; Palestine; the intersection of gender and racism; colonialism; slavery and slave-trade, and indigenous peoples, paying particular attention to the historical context of these complex issues. It was also notable in that both individuals and states participated in the deliberations of the inter-governmental Conference. Emphasising that issues raised at WCAR must continue to be discussed, IMADR commends WCAR for providing opportunities that can promote solutions to these matters.

We welcome WCAR's recognition of the necessity of taking measures that carry financial implications in order to combat racism – measures such as affirmative action and human rights education. The need for careful monitoring of the follow-up processes not withstanding, we welcome WCAR's recommendations, which can produce good results if properly implemented.

IMADR, however, wishes to draw to the attention of the Commission on Human Rights the following subjects of primary concern:

• **Colonialism, Slavery and Slave-trade**

While welcoming the extensive discussion of the subject and the recognition in the Declaration that slavery and the slave-trade constitute crimes against humanity, we regret the western governments' failure to make an explicit apology for the victims of colonialism, slavery, and the slave-trade on the part of those states that were involved in such practices.

We are also concerned that the measures proposed in the Programme of Action for the economic and social development of countries affected by the past wrongs do not transcend the existing framework of development. They fail both to consider whether this framework will help eradicate racial discrimination suffered by peoples in affected countries and to specify an implementation plan for the proposed measures. We urge governments to continue dialogue on other forms of reparations, and to start discussing the implementation of agreed-upon measures to the best benefit the affected peoples.

• **Middle East**

The alarming situation in Israeli-occupied Palestine requires urgent attention and discussions as an issue of racism and racial discrimination. We regret the US and Israeli governments' withdrawal from the WCAR over this issue as well as the reportedly intolerant and uncivil actions of certain NGOs. While being critical of violent or intolerant acts intended to stifle the expression of opposing positions, we note that the tensions accompanying debates on the subject indicate the graveness of the situation and the feeling of hopelessness on the part of these victims of racial discrimination. The international community must condemn grave human rights violations and systematic discrimination on the basis of race, national and ethnic origin, descent, or other status wherever they occur. We urge close monitoring of the situation in the Middle East from the perspective of human rights and non-discrimination.

• Discrimination based on Work and Descent

Discrimination based on work and descent exists all over the world and affects millions of people, including Dalits in the South Asia and Buraku people in Japan. We deeply regret that this form of discrimination was not addressed in the final Declaration and Programme of Action. During the preparatory process, a paragraph was introduced to the Draft Programme of Action urging states to take measures, including affirmative action, to prohibit and redress this form of discrimination and demanding that such measures be respected and implemented by all state authorities at all levels. The paragraph was not adopted, despite the support expressed by many countries to retain it in the document. Discrimination based on descent is a form of 'racial' discrimination prohibited by the International Convention on the Elimination of All Forms of Racial Discrimination. The UN Sub-Commission on the Promotion and Protection of Human Rights passed a resolution in August 2000, condemning discrimination based on work and descent. The international community must continue its efforts to eliminate this form of discrimination.

• Intersection of Gender and Racism

We welcome WCAR's acknowledgement of the intersection of gender and racism and its recommendation urging States to mainstream a gender perspective in the design and development of prevention, education, and protection measures aimed at the eradication of racism. However, we regret that the Conference addressed the concept of multiple discrimination and the question of identifying victims only at an abstract level, failing to produce any action-oriented measures. Governments around the world are encouraged to develop national action plans, accompanied by investigations to clarify the situations faced by women from discriminated groups. Monitoring and follow-up mechanisms must be established in accordance with international human rights standards and include concrete and practical measures and effective remedies to eradicate multiple forms of discrimination. We urge the UN and governments to analyse the systems and practices that cause and support multiple forms of discrimination against women belonging to discriminated social groups. These include patriarchy, religious intolerance, the caste system, the judicial system, culturally embedded forms of racial and sexual discrimination, homophobia, trafficking, colonialism, slavery, slave trade, economic gaps between the North and the South, globalization, armed conflicts, and those traditional and customary practices that women have sought to abolish.

• Indigenous Peoples

We welcome the Declaration and Programme of Action's recognition that indigenous peoples are major victims of racism and discrimination today and that their human rights deserve special attention. However, we regret the notable lack of interest among governments concerning issues and demands brought up by indigenous peoples. The approved text of the final Declaration refers to the "rights of indigenous peoples" in paragraphs 22-24, yet adds the caveat that the use of this term "is in the context of, and without prejudice to the outcome of, ongoing international negotiations on texts that specifically deal with this issue, and cannot be construed as having any implications as to rights under international law." This text, by denying any implications to the negotiations pertaining to the draft Declaration on the Rights of Indigenous Peoples, and maintaining that the *right of peoples to self-determination does not apply to indigenous peoples*, has understandably alienated and angered indigenous peoples present at the WCAR. IMADR regrets that indigenous interests were not addressed with the seriousness that they deserve and that they were also dwarfed by the attention given to other issues of a more widely acknowledged political nature.

• **Globalisation and Racism**

Globalisation is intimately intertwined with racism, racial discrimination, xenophobia and related intolerance. Its speculative mega-competition over the distribution of wealth and information widens the gaps between the 'haves' and the 'have-nots', increasing the socio-economic insecurity of vulnerable groups. It also emphasizes small government, reducing the availability of public goods to the vulnerable social groups and categories. The effects of globalisation, especially in its neo-liberal form, require a plan of action that redresses its negative impacts and increases the socio-economic security of those who suffer these impacts.

We therefore regret that the Inter-Governmental Declaration touches on "Globalization" in Para. 7 merely as a "powerful and dynamic force," failing to produce any strategy of action. In recognising the need for the international community to deploy global action against the negative effects of neo-liberal globalization, we would like to draw your attention to the NGO Document, which provides a good basis for much-needed action. The Document provides:

a) a definition that stresses how globalisation is a continuation of colonial and imperial control, concentrating power in the hands of powerful Western nations and multinational corporations and imposing biased policies of structural adjustment, riticized on, trade liberalization, and unequal terms of trade;

b) a rich plan of action, which addresses the need to develop a plan of action for young people exploited by globalization, opposes punitive actions against community expressions against the discriminatory effects of globalization, protects the intellectual property rights of indigenous people, redresses current unequal distribution of resources, provides financial aid, and supports "humanitarian business" and the enhancement of "corporate social responsibility."

Recognising the need to temper the profit-driven interests of the private sectors by the state, supported by a democratic and broad social consensus, we urge governments to work with the NGO community in addressing issues raised in the above NGO Document.

Towards a future dialogue

It is an undeniable fact that the WCAR Declaration and Programmes of Action attracted many criticisms, particularly in relation to its failure to address certain issues, as briefly mentioned in this statement. The NGO documents were also criticized for their affective language in dealing with the same issues. However, we believe that these problems were unavoidable consequences of the difficult dialogues that took place, both at the governmental and the NGO levels, with the participation of the victims.

Unlike the previous UN conferences, WCAR will require a more imaginative follow-up that allows for continuous dialogue, among governments and NGOs, on all the issues taken up in Durban. With such relationships based on cooperation, it is hoped that WCAR will serve as a starting point for dialogues leading to reconciliation between all parties affected by the global problems of racism, racial discrimination, xenophobia and related intolerance.